



**Laetitia and the Santa Maria Groundwater Basin**

**yemoot2002** to: Brian Pedrotti  
Please respond to yemoot2002

09/30/2015 04:10 PM

The Northern Cities have filed a Motion to Enforce the 2005 Stipulation and 2008 Judgment with the Court as of yesterday. This has a bearing on Laetitia as the Oceano Hydrological Subarea is an important source of recharge to the Northern Cities area. Following are links to the opinion of Paul Sorenson as well as the proposed order. Note that if adopted all development on the Mesa must cease. If you deem it appropriate please share with the Planning Commission. Thank You!

Jim Toomey

[http://www.scefiling.org/filingdocs/8519/89650/endorse\\_138218\\_DeclarationxofxPaulxSorensenxinxSupportxofxMotionxtoxEnforcexStipulationxandxJudgment.pdf](http://www.scefiling.org/filingdocs/8519/89650/endorse_138218_DeclarationxofxPaulxSorensenxinxSupportxofxMotionxtoxEnforcexStipulationxandxJudgment.pdf)

[http://www.scefiling.org/filingdocs/8519/89650/138230\\_ProposedxOrder.pdf](http://www.scefiling.org/filingdocs/8519/89650/138230_ProposedxOrder.pdf)

## Attachment 1 - Comment Letters



**FW: Laetitia: Response to July 22, 2015 Letter Re Alleged Potential Unauthorized Diversion of Water (MJM:UN000882)**

**McCarthy, Matthew@Waterboards** to: Leeper, e@KMTG

09/14/2015 04:23 PM

Cc: "Moody, Mitchell@Waterboards", "bpedrotti@co.slo.ca.us"

From: "McCarthy, Matthew@Waterboards" <Matthew.McCarthy@waterboards.ca.gov>

To: "Leeper, e@KMTG" <eleeper@kmtg.com>

Cc: "Moody, Mitchell@Waterboards" <Mitchell.Moody@waterboards.ca.gov>, "bpedrotti@co.slo.ca.us" <bpedrotti@co.slo.ca.us>

2 attachments



Letter.pdf Map.pdf

Ms. Leeper,

Thank you for your letter dated September 4, 2015 (attached). In your letter responding to my August 28, 2015 email message, you assert that Well 11 draws from percolating groundwater rather than the subterranean stream of Los Berros Creek and you request that I provide confirmation that the Division of Water Rights either (1) rescinds the July 22, 2015 letter or (2) provides communication that the Division has not made any determination regarding the Laetitia Agricultural Cluster Tract Map and Conditional Use Permit project (Project).

I agree that no action is currently necessary regarding Well 11. However, it is still not clear to me how water enters the two reservoirs on the property, therefore I cannot make a determination whether further action is necessary for the two reservoirs. However, information available to me at this time indicates that the unauthorized diversion of water is occurring in the reservoir located at 35.0911, -120.5241 and labeled 'Onstream Reservoir' on the attached map, which was also included in my August 28, 2015 email.

### California Environmental Quality Act

In your letter, you note that the reservoirs are not part of the Project that is being analyzed by the County of San Luis Obispo (County) under the California Environmental Quality Act (CEQA). You also indicate that your position is that the County's CEQA review is not the appropriate forum for addressing the Division's concerns regarding the reservoirs.

State Water Resources Control Board (State Water Board) staff first became aware of the presence of the reservoirs through the CEQA noticing process, therefore the County was included in the State Water Board's contact letter indicating that the unauthorized diversion of water may be occurring. Regardless of whether the reservoirs are part of the Project for the purposes of the County's Environmental Impact Report (EIR), the State Water Board has authority over the diversion and use of surface water. Since the reservoirs are not being removed as part of the Project under CEQA, the unauthorized diversion of water that has occurred will likely continue to occur.

State Water Board staff are willing to continue this correspondence without including the County, if that is what you would prefer.

## Attachment 1 - Comment Letters

However, if a water right approval by the State Water Board is necessary, additional CEQA analysis may be required. If that analysis is required and it is not contained in the County's EIR, then another CEQA document will need to be prepared.

### Information Request

Please provide the following:

1. Information describing the sources of water for the two reservoirs on the property. The 'Onstream Reservoir' is located at 35.0911, -120.5241 and the 'Offstream Reservoir' is located at 35.1016, -120.5202. The locations of the two reservoirs are indicated on the attached map, which was also included in my August 28, 2015 email.
2. Information describing the methods and infrastructure used to divert or store water in, and withdraw water from, the two reservoirs on the property. See above for the locations of the two reservoirs.

### Potential for Enforcement Action

As I mentioned in my letter dated July 22, 2015, the unauthorized diversion and use of water is considered a trespass and is subject to enforcement action. That same letter served as your notice of the statement requirement and potential penalty. According to the County's EIR for the Project, Los Berros Creek is designated steelhead critical habitat (page V.E.-15 of the County's Final EIR). Because at least one of the reservoirs appears to divert water in an unauthorized manner that may have an adverse effect on south-central California coast steelhead (*Oncorhynchus mykiss irideus*), the State Water Board may choose to give enforcement priority to this apparent unauthorized diversion and failure to file a statement. Therefore, your prompt attention to this matter is appreciated. I encourage you to provide the information requested above as soon as possible, and if you choose to not file a statement for the reservoir located at 35.0911, -120.5241 and labeled 'Onstream Reservoir' on the attached map in a timely fashion, please contact me immediately by phone so we can discuss the matter.

As I mentioned in my August 28, 2015 email message, we are available to discuss this with you on the phone. Please contact me if you would like to do so.

Sincerely,  
Matt McCarthy  
Division of Water Rights  
State Water Resources Control Board  
916-341-5310



From: McCarthy, Matthew@Waterboards

## Attachment 1 - Comment Letters

Sent: Friday, August 28, 2015 11:14 AM

To: Leeper, e@KMTG

Cc: bpedrotti@co.slo.ca.us; Moody, Mitchell

Subject: RE: Laetitia: Response to July 22, 2015 Letter Re Alleged Potential Unauthorized Diversion of Water (MJM:UN000882)

Ms. Leeper,

Thank you for the quick response to our letter.

Here is the information you requested:

Reservoirs. Information from the EIR indicates that there is at least one onstream reservoir on the property that are being used for irrigation. The reservoir appears to collect (divert) surface water, and a valid basis of water right is required for such a diversion. In addition, while a second reservoir appears to be offstream, it is not clear how water is diverted into the reservoir. If percolating groundwater is the only source of water for the reservoir, then a valid basis of water right is not needed. The following is an excerpt from Page V.P.-5 of the Final EIR (emphasis added): The agricultural irrigation system included Wells 1, 4, 5, and 9 (F&T 2, F.V. Wells 3, F.V. Wells 1, and F&T 1) and two reservoirs each with storage capacity of 25 acre-feet (af).

Well. Information from the EIR indicates that Well 11 may be withdrawing from the subterranean stream of Los Berros Creek, which would require a valid basis of water right. Absent evidence to the contrary, groundwater is presumed to be percolating groundwater, not a subterranean stream. If you assert that the source of water for Well 11 is percolating groundwater, then the Division would likely need to review Appendix H of the EIR to determine if sufficient evidence is available to prove there is a subterranean stream. The following is an excerpt from Page V.P.-24 of the Final EIR (emphasis added): During the well pumping tests, full recovery of water levels occurred only at Well 11, which is within a few hundred feet of Los Berros Creek. The hydrograph for Well 11 shows strong correlation between rainfall and groundwater levels in the vicinity of Well 11, which indicates that groundwater levels in the vicinity of Well 11 are influenced by the base flow of Los Berros Creek (refer to Appendix H to review hydrographs and detailed data). Conversely, pumping from Well 11 likely influences base flow of Los Berros Creek.

I've included a topographic map from the EIR with notes regarding the location of the reservoirs and the well.

Mitchell and I would be happy to discuss this further with you, however we will both be out of the office next week. Are you available to meet or discuss by phone at 1pm on Thursday, 9/10 or Friday, 9/11?

Thanks,

Matt

Matt McCarthy  
Division of Water Rights  
State Water Resources Control Board  
916-341-5310

## Attachment 1 - Comment Letters



From: Leeper, Elizabeth [<mailto:ELeeper@kmtg.com>]  
Sent: Thursday, August 27, 2015 4:19 PM  
To: McCarthy, Matthew@Waterboards  
Cc: [bpedrotti@co.slo.ca.us](mailto:bpedrotti@co.slo.ca.us)  
Subject: Laetitia: Response to July 22, 2015 Letter Re Alleged Potential Unauthorized Diversion of Water (MJM:UN000882)

Dear Mr. McCarthy,

My firm serves as legal counsel for Janneck Limited with respect to the Laetitia Agricultural Cluster Tract Map and Conditional Use Permit project ("Project") in San Luis Obispo County. The attached letter responds to the July 22, 2015 letter from the Division of Water Rights to the Laetitia Vineyard and Winery, Inc., regarding the alleged unauthorized diversion of water related to the Project. A hard-copy of the attached letter is also being delivered to you by mail.

If you have any questions regarding the attached letter or would like to discuss this matter, please feel free to contact me. Please copy me on any future communications from the Division to the County regarding the Project.

Thank you,

Elizabeth Leeper

Elizabeth Leeper  
Attorney at Law



400 Capitol Mall, 27th  
Floor  
Sacramento, CA 95814

T	916.321.4500
D	916.321.4517
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Attachment 1 - Comment Letters

400 Capitol Mall, 27th Floor  
Sacramento, CA 95814

T 916.321.4500  
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STATE WATER RESOURCES CONTROL BOARD

2015 SEP -9 AM 9:58

DIV OF WATER RIGHTS  
SACRAMENTO

MJM/JH  
UN000882

Elizabeth Leeper  
eleeper@kmtg.com

September 4, 2015

**VIA E-MAIL AND U.S. MAIL**

State Water Resources Control Board,  
Division of Water Rights  
Attn: Matt McCarthy  
P.O. Box 2000  
Sacramento, CA 95812-2000  
E-Mail:  
matthew.mccarthy@waterboards.ca.gov

Re: Response to August 28, 2015 E-Mail Re Potential Unauthorized Diversion of Water  
(MJM:UN000882)

Dear Mr. McCarthy:

My firm serves as legal counsel for Janneck Limited with respect to the Laetitia Agricultural Cluster Tract Map and Conditional Use Permit project ("Project") in San Luis Obispo County. By letter dated August 27, 2015, I provided a response to the July 22, 2015 letter from the Division of Water Rights ("Division") to the Laetitia Vineyard and Winery, Inc., regarding the alleged unauthorized diversion of water related to the Project. My letter requested additional information from the Division regarding the alleged potential unauthorized diversion of water.

You responded to my letter, by e-mail, on August 28, 2015 ("Response"). Your Response addresses two issues: (1) an alleged onstream reservoir; and (2) a well that allegedly may be withdrawing from the subterranean stream of Los Berros Creek. I appreciate your quick Response and the additional information that you provided. A copy of your Response is attached, for your convenience. Below, I address the reservoir and well issues.

**Reservoirs:** Your Response states, in relevant part, that "[i]nformation from the EIR indicates that there is at least one onstream reservoir on the property that are being used for irrigation. The reservoir appears to collect (divert) surface water, and a valid basis of water right is required for such a diversion. . . . The following is an excerpt from Page V.P.-5 of the Final EIR (emphasis added): *The agricultural irrigation system included Wells 1, 4, 5, and 9 (F&T 2, F.V. Wells 3, F.V. Wells 1, and F&T 1) and two reservoirs each with storage capacity of 25 acre-feet (af).*" Your Response does not identify the "information" from the EIR that indicates that there is an onstream reservoir on the property, or that indicates that the reservoir is collecting diverted surface water. The sentence that your Response quotes from the EIR simply states that the agricultural irrigation system includes two reservoirs; it says nothing about an onstream reservoir or about diversions of surface water.

This letter clarifies and confirms that the two reservoirs on the Laetitia property are reservoirs used for the existing agriculture on the property, and are not part of the proposed

State Water Resources Control Board,  
Division of Water Rights  
September 4, 2015  
Page 2

Project that is before the County for its consideration and approval. Nor are the irrigation reservoirs part of the proposed Project that is being analyzed under the California Environmental Quality Act ("CEQA"). Therefore, potential issues regarding the existing reservoirs are irrelevant to the County's consideration of the proposed Project and the County's analysis of the proposed Project under CEQA. It is the Project applicant's position that the County's CEQA review of the proposed Project is not the appropriate forum for addressing the Division's concerns regarding the existing irrigation reservoirs.

**Well 11:** Your Response states, in relevant part, that "[i]nformation from the EIR indicates that Well 11 may be withdrawing from the subterranean stream of Los Berros Creek, which would require a valid basis of water right." However, your Response also acknowledges that "[a]bsent evidence to the contrary, groundwater is presumed to be percolating groundwater, not a subterranean stream. If you assert that the source of water for Well 11 is percolating groundwater, then the Division would likely need to review Appendix H of the EIR to determine if sufficient evidence is available to prove there is a subterranean stream."

This letter confirms that it is the position of the Project applicant that Well 11 only withdraws percolating groundwater, and that Well 11 does not divert from a subterranean stream. Well 11 is screened in the fractured resistant volcanic tuff of the Obispo Formation and is located several hundred feet away from Los Berros Creek. (See Final EIR, at pp. V.P.-5, V.P.-6, V.P.-10, V.P.-24.) As you know, the State Water Resources Control Board ("State Water Board") has applied a four-part test for determining whether groundwater should be classified as a subterranean stream. "[F]or groundwater to be classified as a subterranean stream flowing through a known and definite channel, the following physical conditions must exist: [¶] 1. A subsurface channel must be present; [¶] 2. The channel must have a relatively impermeable bed and banks; [¶] 3. The course of the channel must be known or capable of being determined by reasonable inference; and [¶] 4. Groundwater must be flowing in the channel." (*In re Garrapata Water Co.* (June 17, 1999) State Wat. Resources Control Bd. Dec. No. 1639; see *N. Gualala Water Co. v. State Water Res. Control Bd.* (2006), 139 Cal. App. 4th 1577, 1585.) The Division has not identified evidence with respect to this four-part test, nor has the Division identified evidence to support the conclusion that Well 11 diverts from a subterranean stream. I maintain the position that Well 11 diverts from percolating groundwater and therefore, those diversions are not subject to the State Water Board's jurisdiction over surface waters and subterranean streams.

In conclusion, I request that you provide written communication confirming that, based on the available information and the Division's review of that information, the Division rescinds its July 22, 2015 letter regarding alleged unauthorized diversions of water related to the Laetitia project. In the alternative, if the Division concludes that is appropriate to continue its review of the available information, I request that you provide written communication confirming that the Division's review is on-going and that the Division has not made any determination regarding the Project's water diversions at this time.

State Water Resources Control Board,  
Division of Water Rights  
September 4, 2015  
Page 3

Thank you for your attention to this matter.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Professional Corporation



MONA G. EBRAHIMI  
ELIZABETH LEEPER

EL  
Attachment

cc: County of San Luis Obispo  
c/o Brian Pedrotti  
Department of Planning and Building  
976 Osos Street, Room 200  
San Luis Obispo, CA 93408

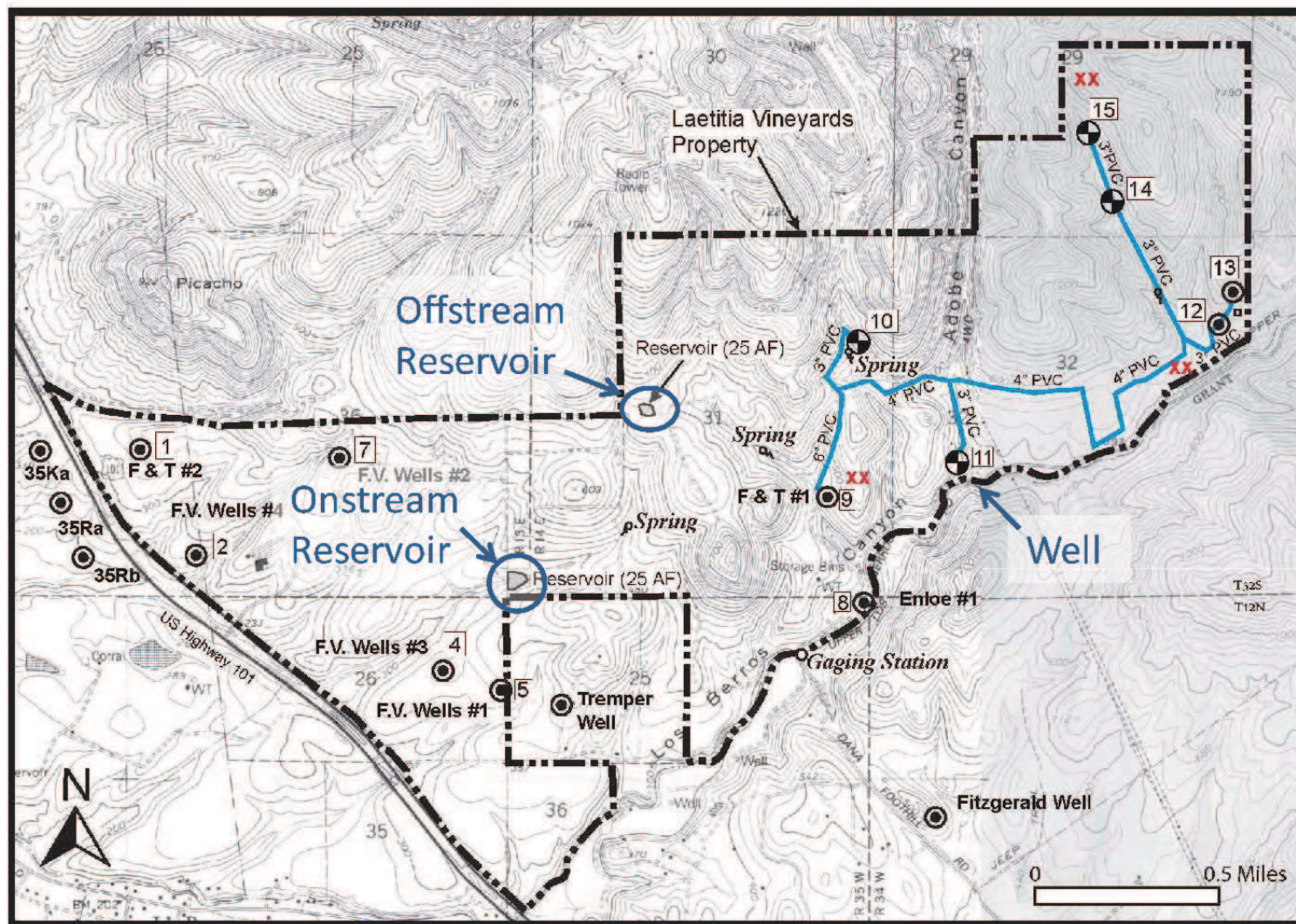
County of San Luis Obispo  
c/o Brian Pedrotti  
bpedrotti@co.slo.ca.us





## Attachment 1 - Comment Letters

Source: Geosyntec, 2013



Base map: U.S.G.S. 7.5 minute topographic,  
Oceano and Nipomo Quadrangles, CA

Base map scale: 1 inch = 2000 feet

Well locations approximate

Adapted from CHG memo, 4 Jan 2011

## Explanation

15 ● Well Location and number

— Well discharge piping

XX Weather recording station

⊕ Water Supply Well  
for Proposed  
Subdivision